

March 30, 2006

PINELANDS COMMISSION

Pinelands Comprehensive Management Plan

Application Fees

Adopted Amendments: N.J.A.C. 7:50-1.6

Proposed: January 3, 2006 at 38 N.J.R. 44(a)

Adopted: April 6, 2006 by the New Jersey Pinelands Commission,
John C. Stokes, Executive Director

Filed: May 25, 2006 **without change**

Authorized by: New Jersey Pinelands Commission.

Authority: N.J.S.A. 13:18A-6n.

Effective Date: June 19, 2006

Expiration Date: Exempt.

Summary of Public Comments and Agency Responses:

The New Jersey Pinelands Commission (Commission) is adopting amendments to Subchapter 1, General Provisions, of the Pinelands Comprehensive Management Plan (CMP). These amendments were proposed on January 3, 2006 at 38 N.J.R. 44(a). The adopted amendments revise various provisions of the Commission's fee provisions.

In association with publication of the proposed amendments and new rule in the January 3, 2006 issue of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands municipality and county, as well as to other interested parties, for review and comment. Additionally, the Pinelands Commission:

- Sent notice of the public hearing to all persons and organizations which subscribe to the Commission's public hearing registry;
- Placed advertisements of the public hearing in the five official newspapers of the Commission, as well as on the Commission's own web page;
- Submitted the proposed amendments and new rule to the Pinelands Municipal Council pursuant to N.J.S.A. 13:18A-7f;
- Distributed the proposed amendments to the news media maintaining a press office in the State House Complex;
- Published a copy of the proposed amendments on its web page at www.nj.gov/pinelands; and
- Distributed press releases concerning the proposed amendments and new rule to the news media

A formal public hearing was held before the Commission staff on February 15, 2006.

Three people attended the hearing. No one presented oral testimony on this rule proposal.

The record of this rulemaking is available for inspection in accordance with applicable law by contacting:

Betsy Piner

Pinelands Commission

P.O. Box 7

New Lisbon, NJ 08064.

Summary of Public Comments and Agency Responses:

The Commission accepted written comments by regular mail, facsimile or e-mail on the January 3, 2006 proposal through March 4, 2006.

The following persons submitted written comments:

1. Harkins, Joanne, The New Jersey Builders Association
2. Sachau, B.

The Commission's responses to the comments are set forth below. The numbers following each comment in parentheses corresponds to the commenter numbers above.

1. **COMMENT:** One commenter felt that the Commission's application fees are far too cheap and suggested that certain fees be increased. Specifically, the commenter suggested increasing the following fees: 1) increase the residential dwelling fee to \$500 per dwelling unit for the first 50 units, \$5,000.00 each for units 51 through 150 and \$10,000 for all units in excess of 150 and 2) increase the base fee for commercial, institutional, industrial or other non-residential development applications to \$100,000 and start the tiers at 3% of construction costs. (2)

RESPONSE: The Commission disagrees. The Pinelands Commission's application fee schedule was initially adopted on April 5, 2004. (See 36 N.J.R. 1804(a)). As discussed in its notice of adoption, the intent of the Commission's fee schedule was to allocate a portion of its development review costs to those individuals who most directly benefitted from its review activities. The Commission acknowledged that because society as a whole also benefits from the efforts of the Pinelands Commission to promote orderly development within the Pinelands and, thereby, preserve and protect the significant and unique resources of the Pinelands, it was also appropriate for the State taxpayers to share

in the support of the legislatively mandated activities of the Commission through the Commission's budget allocation. At the time it adopted its fee schedule, the Commission believed, and continues to believe, that it was appropriate to exempt certain types of applications from its fee requirements. The proposed amendments did not repeal or substantially modify the Commission's underlying fee schedule. Rather, the amendments were designed to amend certain specific fee provisions based on the Commission's 1 ½ years of experience with implementing its fee schedule. With regard to the \$200 base fee for commercial, institutional, industrial or non-residential application fee, this fee was adopted as part of the Commission's original fee schedule and was not modified by the proposed amendments. The proposed amendments to the residential and the commercial, institutional, industrial or non-residential application fee provisions were intended to bring these fees into better accord with each other. The Commission believes that its fee schedule, as amended, is appropriate.

2. **COMMENT:** One commenter indicated that one family development should and must pay a fee. According to the commenter the exemption provided for one residential dwelling unit at N.J.A.C. 7:50-1.6(b)1i constitutes a "freebie" and the commenter opposed all freebies. (2)

RESPONSE: The Commission's existing fee schedule currently exempts applications for a single dwelling unit from its fee provisions. The intent of this provision was to exempt the development of a single family dwelling by an individual from the Commission's application fee provisions. The proposed amendments did not amend this policy but rather clarified that an application fee would not be required in those cases where the applicant

has not submitted another residential development application involving a single dwelling unit in the previous twelve month period. The Commission continues to believe that it is appropriate to exempt applications for the development of a single family dwelling by an individual from its application fee provisions.

3. **COMMENT:** One commenter indicated that a two lot subdivision should pay a double fee and should not be exempt. (2)

RESPONSE: The Commission disagrees. Consistent with its policy regarding applications for single family dwellings by individuals, the Commission believes it is appropriate to exempt two lot subdivision applications that result in the creation of only one new dwelling unit.

4. **COMMENT:** One commenter indicated that golf course development counts and requires a fee. According to the commenter, an exemption should not be provided for golf courses, which use pesticides, kill wildlife and birds and are very harmful to the environment. The commenter felt that there were enough golf courses in New Jersey already. (2)

RESPONSE: Neither the Commission's fee schedule nor the proposed amendments provide an exemption from application fees for golf course development. The fee provision pertaining to golf course development may be found at N.J.S.A. 7:50-1.6(c)3.

5. **COMMENT:** With regard to the proposed amendments to N.J.A.C. 7:50-1.6(c) governing commercial, institutional, industrial or other non-residential development application fees, one commenter indicated that all construction costs must be included when calculating the appropriate fee. (2)

RESPONSE: The applicable fee for commercial, institutional, industrial or other non-residential development applications is calculated based upon a percentage of construction costs associated with the development. The proposed amendments merely clarify that items such as interior furnishings, atypical features, decorative materials or other similar features, which are not typically considered “construction costs”, should not be included when calculating the applicable application fee.

6. **COMMENT:** One commenter objected to proposed N.J.A.C. 7:50-1.6(e) which establishes a \$50,000 cap on the amount of the application fee required at the time of submission of a development application. According to the commenter, this provision constituted a giveaway to developers. The commenter felt that the cap should be set at \$1,000,000. (2)

RESPONSE: The Commission disagrees. As discussed in response to comment 1 above, the intent of the Commission’s fee schedule is to allocate a portion of its development review costs to those individuals who most directly benefit from its review activities. Moreover, to the extent that a specific development application would require considerable staff review, the proposed amendments at N.J.A.C. 7:50-1.6(l) authorize the Executive Director to request an escrow payment to compensate the Commission for the considerable staff time expended to review a particularly complex application.

7. **COMMENT:** One commenter objected to proposed N.J.A.C. 7:50-1.6(g) which establishes a fee of \$500 or the amount calculated according to the Commission’s fee schedule, whichever is less. The commenter indicated that development is development whether undertaken by a church or a commercial entity. In addition, according to the

commenter, there are too many non-profit organizations and, consequently, there is no reason for the reduced fee provision. (2)

RESPONSE: The Commission disagrees. As discussed in response to comment 1, the intent of the Commission's fee schedule is to allocate a portion of its development review costs to those individuals who most directly benefit from its review activities. At the time it adopted its fee schedule, the Commission believed that it was appropriate to exempt certain types of applications from its fee requirements. The Commission continues to believe that it is appropriate to exempt or provide for reduced application fees for certain types of applications, including applications submitted by qualified tax-exempt religious associations and non-profit organizations.

8. **COMMENT:** One commenter objected to proposed N.J.A.C. 7:50-1.6(k) which establishes a fee for the review of any study or survey prior to the submission of a development application. The commenter interpreted a portion of this provision as a refund of the fees to review such studies or surveys. (2)

RESPONSE: Proposed N.J.A.C. 7:50-1.6(k) does not provide for a refund of the fee required for the review of certain studies or surveys submitted prior to submission of the underlying development application. The Commission's current fee schedule requires submission of a development application before the Commission will review any studies or surveys. The scope of a proposed development, however, may be impacted, for example, by the results of a threatened or endangered species or cultural resource survey. Consequently, applicants have sought to have the Commission review these surveys in advance of submitting the underlying development application. The proposed amendments

accommodate the needs of applicants and, at the same time, compensate the Commission for its staff's review of such studies or surveys. Because the review of these studies or surveys normally would be part of the usual review of a development application, the Commission felt it was appropriate to deduct the fee submitted for the advanced review of such study or survey from the application fee required when the underlying development application is submitted for review; otherwise the applicant would arguably be paying twice for the same review.

9. **COMMENT:** When initially adopted, this section [then (i)] provided for the posting of an escrow account “because of the need for specialized expertise” that necessitated the retention of consultants to assist in the review of an application. As amended, this section now provides for the expanded use of escrow accounts to also cover the cost of “considerable staff review” when the Executive Director determines that a development application involves complex issues. (1)

RESPONSE: The Commission agrees with the commenter's characterization of the proposed amendment.

10. **COMMENT:** Although recognizing that there may be few applications that could meet the threshold of complexity that would legitimately require “considerable staff time”, one commenter expressed a concern regarding the proposed amendments that the use of escrow accounts for review of development applications could become standard practice. The commenter's concern was based on the experience of its members in posting escrow accounts and the abuse of them by other reviewing entities and their professional consultants. The commenter suggested that the Commission amend the regulations to

include standards that could trigger the requirement for the posting of an escrow account and the accounting for charges against that escrow. At a minimum, the commenter recommended that the accounting for escrow charges should follow the Municipal Land Use Law procedures codified at N.J.S.A. 40:55D-53.1. (1)

RESPONSE: As noted by the commenter, the proposed amendment authorizes the Executive Director to assess an escrow for those development applications that involve complex issues that either necessitate the retention of consultants to assist in the review of such application or will require considerable staff review. Consequently, the language of the rule does not support an interpretation that its use will become standard practice. In fact, based on almost 2 years of experience in implementing its fee schedule, the Executive Director has not evoked the escrow provision once. The experiences of the commenter's members with other regulating entities does not support an inference that a similar situation will arise regarding the Commission's treatment of such escrow payments. Moreover, the Commission's escrow provision contains procedures regarding the posting of an escrow account and providing an accounting for such expenses. For example, the regulations require that escrow monies submitted in accordance with N.J.A.C. 7:50-1.6(l)2 be held in an escrow account and that, at the time the final approval takes place, a statement of the escrow account be provided and any remaining funds be returned to the applicant. The Commission believes that its escrow provisions are sufficiently clear and appropriate.

Federal Standards Statement

Section 502 of the National Parks and Recreation Act of 1978 (16 U.S.C. §471i) called

upon the State of New Jersey to develop a comprehensive management plan for the Pinelands National Reserve. The original plan adopted in 1980 was subject to the approval of the United States Secretary of the Interior, as are all amendments to the plan.

The Federal Pinelands legislation sets forth rigorous goals which the plan must meet, including the protection, preservation and enhancement of the land and water resources of the Pinelands. The adopted amendments revise the Commission's application fee schedule. These amendments do not amend any of the provisions of the CMP that implement the Federal goals of the CMP. As a result, the Commission has concluded that the adopted amendments do not exceed any Federal standards or requirements.

There are no other Federal requirements which apply to the subject matter of the adopted amendments.